



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
08/766,651	12/16/96	FRANTZ	D. 1548
			EXAMINER

F3M1/0602

KEN J PEDERSEN
PEDERSEN & COMPANY
P O BOX 2666

BOISE, ID 83701-2666

DATE MAILED: 06/02/97

PAPER NUMBER 5

3301
DATE MAILED: 06/02/97

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

- Subject matter developed by another person, which qualifies as prior art only under 35 U.S.C. § 102(b) of this title, shall not preclude patentability under 35 U.S.C. § 103 of this title if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
- ☐ Responsive to communication(s) filed on _____ of this title, shall not preclude patentability under 35 U.S.C. § 102(b) of this title if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-25 are pending in the application.
- ☐ Of the above, claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-25 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of Reference Cited, PTO-892
- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) _____
- ☐ Interview Summary, PTO-413
- ☒ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

Art Unit: 3301

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1-4, 8-9, 12-13, 16-18, 22-25 are rejected under 35 U.S.C. § 103 as being unpatentable over Halstrom '945 in view of Fenton.

Halstrom discloses in figures 3-9 an oral mandibular advance appliance comprising and upper tray 28 , a lower tray 32, each having a trough (the inner lower channel in the trays) that is smaller than the trays, a connection means 40 that includes a space 50, a flexible anterior portion (the front of tray 28) a flexible anterior portion (the front of tray 32), a textured surface (the elastomer material has a surface that allows impression to be made thereon) inside of the upper and the lower tray and a method of making the device. However, Halstrom does not disclose a securing means. Fenton teaches in figures 1-7 an oral mandibular advancement appliance comprising a securing means 24. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the securing means as taught by Fenton could be incorporated into the upper and lower trays

Art Unit: 3301

as disclosed by Halstrom in order to be able to secure the user's teeth impressions therein. It is old and well known that the step of administering anesthesia can be done with a mouthpiece in a patient's mouth.

Claims 5-7, 10-11 and 14-15 are rejected under 35 U.S.C. § 103 as being unpatentable over the references as applied to claim 1 above, and further in view of Tomasi.

Tomasi teaches in figure 1 an oral mandibular advancement appliance comprising an upper and a lower tray (20,30), having a rigid portion, a connection means that includes a Y-shaped pull-strap 100 having left and right wings (fig. 1), a handle (the tip of 100) a plurality of holes (fig. 1) and protruding pins (fig. 1). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the connection means as taught by Tomasi could be substituted for the connection means as disclosed by Halstrom in order to be able to connect and disconnect the upper and the lower trays together. The rigid portions as taught by Tomasi could be used to provide rigidity to the upper and the lower trays as disclosed by Holstrom.

Claims 19-21 are rejected under 35 U.S.C. § 103 as being unpatentable over the references as applied to claim 16 above, and further in view of Tomasi.

Tomasi discloses in figure 1 an oral mandibular advancement appliance, as immediately set forth above. It would have been obvious to one having ordinary skill in the art the time that the invention that the connection means and the rigid portions as taught by Tomasi could be

Serial Number: 08/766,651

-4-

Art Unit: 3301

incorporated into the device as disclosed by Halstrom for the reason set forth immediately above.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Lowe discloses a positioning device. Adell discloses a mothguard. Although each of these references discloses structural limitations recited in the claims, neither was used to reject any claims in the first office action.

Any inquiry concerning this communication should be directed to Michael Brown at telephone number (703) 308-2682.



M. Brown
23 May 1997

MICHAEL A. BROWN
PRIMARY EXAMINER
GROUP 3300